IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 166/2002
With
CROSS OBJECTION.

1. State of Goa,

Through the Land Acquisition Officer,
P.W.D. (Cell), Altinho, Panaji, Goa.

2. The Executive Engineer,
W.D. II, P.W.D., Panaji, Goa. …….. Appellants.

V/s.

Shri Suresh V. Kamat Wagh,
r/o. H.No.140, St. Pedro,
Ribandar, Goa. …… Respondent.

Ms. Gauri Bhonsule, Addl. Govt. Advocate for the appellants.

Mr. V. Menezes, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 11TH AUGUST, 2006.

ORAL JUDGMENT :

The State has preferred this appeal against the Award passed in Land Acquisition Case No. 29/98 by the Addl. District Judge, Panaji dated 30th August, 2001, allowing the reference under Section 18 of the Land Acquisition Act, filed by the claimant awarding rate of compensation to the

entire land at the rate of Rs.180/- per sq. metre along with all statutory benefits.

2. Heard both the parties. Perused the records. By Notification under Section 4 of the Land Acquisition Act ("the said Act" for short) published on 25th May, 1995, the land of the claimant was acquired for construction of a road at Chimbel of Tiswadi Taluka. The Land Acquisition Officer awarded compensation of Rs.20/- per sq. metre. Not being satisfied with the rate awarded by the Land Acquisition Officer, the claimant moved an application for enhancement, which was subject-matter of reference under Section 18 of the said Act.

3. The State contested the claim, submitting that the rate of compensation granted by the Land Acquisition Officer was legal and proper and therefore, there was no reason for enhancement of the compensation and sought for dismissal of the reference.

4. The learned reference Court was of the view, on the basis of the available evidence, that though the rate of compensation of the acquired land could not be granted at the rate of Rs.600/- per sq. metre as claimed by the claimant, the claimant was entitled to rate of Rs.180/- per sq. metre,

and accordingly, the reference came to be allowed, in part. Hence, the present appeal.

5. Cross objection is preferred by the claimant. The claimant submitted that the learned reference Court did not appreciate the evidence properly and hence, prayed that the compensation should be awarded at the rate of Rs.600/- per sq. metre on various grounds.

6. At the outset, it may be noted that the claimant has led evidence, both documentary as well as oral. As against this, there is no evidence on record on behalf of the appellants herein and they have chosen to rest their case merely on cross examination of the witnesses of the claimant. Perusal of the entire record shows that the location of the impugned property is not in dispute. It is situated at St. Pedro and abutting the Panaji – Ponda national highway and there are residential houses in the vicinity of the acquired land. Amenities like water, electricity, telephone were available near the acquired. The entire plot of the claimant admeasured 2000 sq. metres, out of which, an area of 400 sq. metres was notified to be acquired. However, the claimant is now restricting his claim only for an area of 134 sq. metres of such land and, therefore, I am of the considered view that the claimant shall be entitled to compensation only

to the extent of an area of 134 sq. metres and not 400 sq. metres.

7. In support of his claim, the claimant has relied upon a sale instance of the land in the vicinity dated 2.1.95 which land was situated at Bainguinim and was sold at the rate of Rs.600/- per sq. metre. It was a developed plot. On the basis of this sale instance, the claimant has claimed the same rate of compensation in view of the identical situation of both the plots in the vicinity. It appears from the record that the learned reference Court Judge was of the view that the said plot under the sale transaction dated 2.1.95 was on the distance of about 3 kms. from the plot of the claimant and it was a plain and levelled land and was facing Mandovi river, electricity, transport, telephone, water facilities were available and various housing development schemes were coming up within a radius of one kilometre. The evidence on record regarding distance between two plots is conflicting in the sense that while the claimant in his evidence has stated that the plot is at a distance of 3 kms; his two witnesses, namely Kashinath Shetye has stated that the distance is only 50 metres between the said two plots; whereas witness Suresh Bhobe who has prepared the valuation report has stated that the said plot is located on the distance of about 300 metres from the acquired land. Now, while taking into account all these conflicting statements, I am of the view that the

opinion given by Architect Suresh Bhobe appears to be more plausible, because the Architect had visited the impugned property and he has stated that the said plot is on the distance of about 300 metres from the acquired land and Panaji-Ponda National Highway is on the distance of about 200 metres therefrom. As against this, it is evident from the record that the plot of the claimant is abutting the National Highway and the land is *bharad* type and it is fit for construction purposes. There existed some houses nearby land and part of the land was also converted in order to construct structure in the same. In view of this position, I am of the opinion that the view taken by the reference Court to deduct the quantum of compensation by 50 % deduction on the rate of Rs.600/- and further deduction of 40 % as the plot under the said sale deed is a developed plot, cannot be held to be correct, especially when the suit plot was also converted for non-agricultural purposes. Under the circumstances, I am of the view that taking into account the totality of the factual aspects as well as the evidential position, 30 % deduction would be justified on the rate of Rs.600/- and further deduction of 20 % on the ground that the plot under the sale deed is a developed plot and, as such, total 50 % deduction would be sufficient to meet the interest of justice, which would come to the rate of Rs.336/- per sq. metre, instead of Rs.180/- per sq. metre awarded by the reference Court. It is further clarified that this rate would be available to

the land only to the extent of 134 sq. metres to which claim for enhancement is restricted by the claimant.

8. Hence, the appeal as also the cross objection are partly allowed. The Judgment and Award dated 30.8.2001 is partly set aside and modified to the extent that the rate of compensation in respect of the acquired land to the extent of 134 sq. metres is fixed at Rs.336/- per sq. metre. Remaining award passed by the reference Court shall remain good in law. With these directions both the proceedings stand disposed of.

P.V. KAKADE, J.

ssm.